

LAMBERT AND ANTHONY
MEDIUM WAVE TRANSMITTING ANTENNAS
2613 CRAIG AVENUE
CONCORD, NORTH CAROLINA 28027

JUSTINE HOPE LAMBERT
YORK DAVID ANTHONY

ORIGINAL
FILE

TELEPHONE (704) 786-8874

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November 20, 1992

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna Searcy, Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

RE: Amendment of §73.202[b]
FM Table of Allotments
Topeka, Olathe and Silver Lake, Kansas
(Docket 92-218, RM 8054, RM 8053)

Honourable Secretary:

Transmitted herewith on behalf of the NEW HORIZONS EDUCATIONAL FOUNDATION, INCORPORATED is an original and four copies of a COUNTERPROPOSAL in the above captioned rulemaking proceeding. New Horizons seeks allotment of channel 257A at Silver Lake, Kansas as its first FM service and reservation of this channel for noncommercial educational use.

Should there be enquiry please direct it to the undersigned.

Very truly yours,

York David Anthony

No. of Copies rec'd
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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NOV 20 1992

FCC - MAIL ROOM

In the matter of)
)
Amendment of 47CFR §73.202[b])
FM Table of Allotments)
Topeka, Olathe and Silver Lake, Kansas)

MM Docket 92-218
RM-8054
RM-8053

RECEIVED

To: Chief, Allocations Branch
Mass Media Bureau

NOV 20 1992

COUNTERPROPOSAL

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Comes now NEW HORIZONS FOUNDATION, INCORPORATED (NHF), who, pursuant to 47CFR §1.420[d] of the Commission's Rules and Regulations, seek to advance a Counterproposal in the above-captioned rulemaking. NHF seek to have channel 257A allotted to Silver Lake, Kansas as its first FM service and reserve the channel to noncommercial educational use as contemplated in 47CFR §73.501. In support whereof NHF present the following:

1. Standing and History. NHF is a lawfully chartered nonprofit educational foundation under the relevant provisions of IRS section 501(c)(3). Among other things, the enabling charter for NHF provide that it establish outlets of local broadcast expression peculiarly attuned to the cultural and spiritual needs of minor children and young adults. NHF strongly believe that participation of youth in the mass media is ostensibly in the public interest, convenience, and necessity. Moreover, NHF has the ability to present programmes in traditional secular and religious disciplines, and meets the bona fides as regards an NCE-FM licensee. NHF qualifies as an interested party under 47CFR §1.401[a] and certifies that it will apply for and if granted will construct the requested facilities at Silver Lake, Kansas.

History. This is a Counterproposal to two mutually exclusive rulemaking proceedings at Olathe and Topeka, Kansas (see Exhibit 3). Briefly, Bott Broadcasting Company ("Bott") requests the substitution of channel 222C3 for channel 222A at Olathe, Kansas and modification of his construction permit for KCCV(FM) accordingly. Margaret Escriva ("Escriva") wishes to substitute channel 223C3 for channel 223A at Topeka, Kansas and modify her construction permit for KESC(FM) accordingly. In order that the Bott proposal comply with 47CFR §73.207[b][1] it has been determined by the Bott proponent that substitution of channel 257A for channel 223A at

Topeka and modify the KESC(FM) permit of Escriva accordingly is required.

2. Counterproposal. The public interest, convenience, and necessity will be served by allotting channel 257A to Silver Lake, Kansas and reserving the channel for noncommercial educational use. Furthermore, the allotment of channel 223C3 as proposed by Escriva will provide an additional wide area service in a substantially rural area. Channel 257A would be the first outlet of local expression at Silver Lake, Kansas. The Bott proposal, while providing an additional coverage potential at Olathe, Kansas, is located in a market already receiving service from 11 class C1 commercial stations or better, a class 'A' FM, and multiple high power class 'C1' or better noncommercial educational stations. Topeka receives service from 5 class 'C' commercial FM stations and two class 'C2' or better noncommercial educational stations. Excluded from the analysis are the stations at Lawrence, Kansas, which are shared by both markets. Clearly, the allotment of channel 257A to Silver Lake is consistent with the Commission's mandate under §307[b] of the Communications Act of 1934.^[1]

3. Technical Issues. Exhibit 1 is an allocation study performed at the reference coordinates for Silver Lake, Kansas, obtained from the Index to the National Atlas of the United States of America (1978) on an on-line commercial timesharing system. The allocation study in Exhibit 1 demonstrate that a class 'A' FM radio station operating on channel 257A at the reference coordinates clears all allocations, licenses, and proposals by generous margins, fully satisfying 47CFR §73.207[b][1]. Exhibit 2 is a USGS 1:250000 topographic quadrangle replica on which the proposed transmitter site, community political limits, and the required 70 dBuV contour showing are presented. There is no question as to the efficacy of the requested facility's city grade signal performance. Accordingly, the Counterproposal meets all the technical requirements of the rules.

4. Community Issue. Silver Lake, Kansas is an incorporated city under the laws of the State of Kansas. It has independent political boundaries distinct from Shawnee County, Kansas. Silver Lake, Kansas has a mayor-council form of government that administrates the usual municipal amenities including, but not limited to, a full time police and fire department, primary and secondary schools, capital improvements (e.g. roads), and so forth. Silver Lake, Kansas has independent fire, police, water, sewer, school, and sanitation districts. The community has the power to levy and collect taxes and appropriate funds to municipal improvements.

[1] NHF does not disparage the Bott allotment to the extent that channel

Silver Lake, Kansas has an enumerated population of 1,390 in 1990, with an additional 498 persons in the extraterritorial zoning limits. There can be no question as to the standing Silver Lake has in being eligible to receive an FM allotment. Silver Lake meets the threshold population and municipal criteria to establish it as a "community" for allotment purposes.

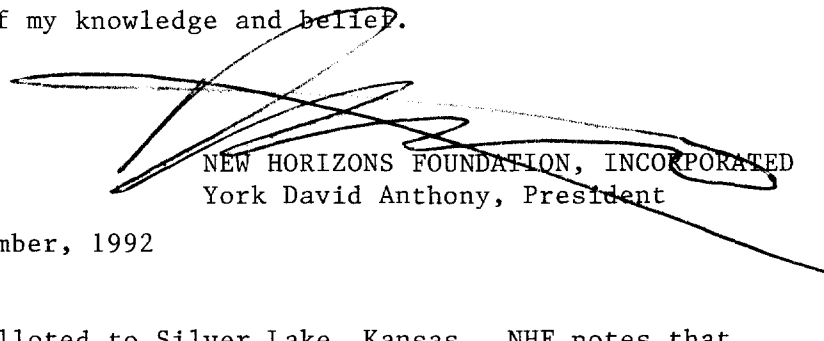
5. Reservation for NCE-FM Use. The Commission may make a determination as to when a channel in the non-reserved band may be reserved for NCE-FM use. An engineering study by NHF has determined that all 20 NCE-FM channels are essentially precluded by the high power operations at Kansas City, Missouri and the Topeka, Kansas area. Channel 205A may be used at Silver Lake with very diminutive facilities (due to cochannel station KJTO at Ottawa, Kansas, only 71 km distant). Should the Commission otherwise direct, NHF will file for channel 257A at Silver Lake as an NCE-FM applicant without the NCE-FM reservation.

6. Declaration of Interest. NHF explicitly states that should channel 257A (or other channel as the Commission should direct) be allotted to Silver Lake, Kansas that it will expeditiously apply for and if granted construct a noncommercial educational FM Station at Silver Lake, Kansas with the maximum lawful facilities of 6 kw and 100 m HAAT or other such facilities as would produce a 28 km class contour.

WHEREFORE, NHF requests amendment of 47CFR §73.202[b] as follows:

	BEFORE	AFTER
Silver Lake, Kansas	none	257A
Topeka, Kansas	223A, 247C, 262C, 295C, 299C	223C3, 247C, 262C, 295C, 299C
Olathe, Kansas	222A	222A

I certify under penalty of perjury that the statements made herein are true to the best of my knowledge and belief.


NEW HORIZONS FOUNDATION, INCORPORATED
York David Anthony, President

This the 20th day November, 1992

[1] 257A can be allotted to Silver Lake, Kansas. NHF notes that in all likelihood the Bott and Escriva proposals can be reconciled at other sites with full protection of each other and enhanced C3 operation.

EXHIBIT 1

=====

Lambert & Anthony
Concord, North Carolina

Page 1
November 16, 1992

Title: Silver Lake, KS
Channel 257A (99.3 MHz)

Latitude: 39-06-12
Longitude: 95-51-36

Call	Auth	Licensee name	Chan	ERP-kW	Latitude	Br-to	Dist.	Req.
City of License	St	FCC File no.	Freq	EAH-m	Longitude	-from	(km)	(km)
KLJC	LIC	CALVARY BIBLE COLLEGE	*203C1	100DA	39-04-24	91.2	119.0	22
KANSAS CITY	MO	BLD-910315KA	88.5	227	94-29-06	272.0	97.01	CLEAR
KXMS	LIC	BD OF REGENTS MO SOUTHER	*204C2	10	37-05-57	150.8	254.0	15
JOPLIN	MO	BLD-880427KB	88.7	56	94-27-46	331.7	239.0	CLEAR
KSQB	CP	GARY L. VIOLET	254A	6	37-28-49	221.6	239.4	31
CLEARWATER	KS	BPH-910412MD	98.7	100	97-39-42	40.5	208.4	CLEAR
KQRC	LIC	WTMJ, INC.	255C	100	39-04-14	91.5	110.5	95
LEAVENWORTH	KS	BLH-871006KF	98.9	322	94-34-59	272.3	15.54	CLOSE
KBUZ	CP	GARY L. VIOLET	256C1	100	37-56-22	217.5	162.4	133
EL DORADO	KS	BMPH-910102IA	99.1	188	96-59-20	36.8	29.43	CLEAR
KBUZ	LIC	GARY L. VIOLET	256C2	45	37-48-11	213.8	173.2	106
EL DORADO	KS	BLH-891030KD	99.1	157	96-57-24	33.1	67.20	CLEAR
RM	RM-8054		257A		39-07-33	80.5	15.29	115
TOPEKA	KS	DOC-92-218	99.3		95-41-08	260.6	-100	SHORT
PRM adopted 09/03/92, released 10/02/92; RM-8054; OPTION I								
KIKS-FM	LIC	IOLA BROADCASTING INCORP	257A	3	37-54-04	163.2	139.3	115
IOLA	KS		99.3	91	95-24-04	343.5	24.31	CLEAR
KUTT	LIC	SIEBERT COMMUNICATIONS I	257A	2.65	40-11-04	319.2	159.7	115
FAIRBURY	NE	BLH-841025CP	99.3	98	97-05-15	138.4	44.72	CLEAR
KNIM-FM	LIC	NODAWAY BROADCASTING COM	257A	3	40-19-41	31.4	160.1	115
MARYVILLE	MO	BLH-791126AI	99.3	72	94-52-31	212.1	45.06	CLEAR
KKBZ	ORD	KMA BROADCASTING LP	257C2		40-33-12	21.1	173.0	166
CLARINDA	IA		99.3		95-07-18	201.6	7.04	CLEAR
KGZF	CP	CHARLES D COFFELT	258A	6	38-24-34	203.0	83.67	72
EMPORIA	KS	BMPH-900416IC	99.5	100	96-14-09	22.8	11.67	CLEAR
KUTT	ORD	SIEBERT COMMUNICATIONS,	258C1	100	40-10-57	321.8	153.4	133
FAIRBURY	NE	BPH-900427IC	99.5	211	96-58-33	141.9	20.39	CLEAR
KLTH	LIC	BONNEVILLE HOLDING COMPA	259C	100	39-05-01	90.7	116.3	95
KANSAS CITY	MO	BLH-900222KC	99.7	308	94-30-57	271.5	21.31	CLEAR
KSKG	LIC	SALINA FM, INC.	260C1	100	38-47-36	257.1	148.5	75
SALINA	KS		99.9	174	97-31-33	76.0	73.46	CLEAR

>> End of channel 257C3 study <<

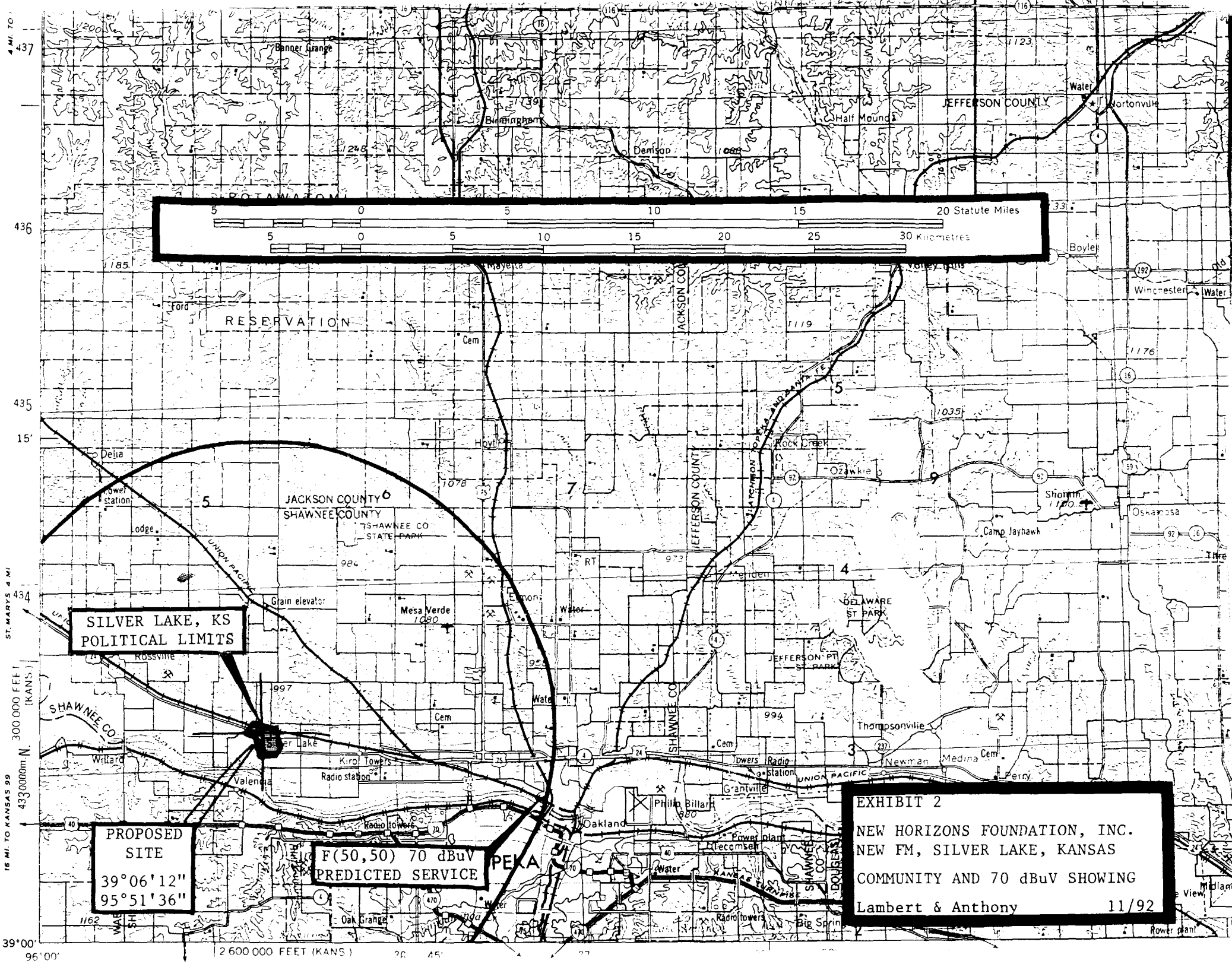


EXHIBIT 2

NEW HORIZONS FOUNDATION, INC.
NEW FM, SILVER LAKE, KANSAS
COMMUNITY AND 70 dBuV SHOWING
Lambert & Anthony 11/92

Federal Communications Commission

DA 92-1215

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-218

In the Matter of

Amendment of Section 73.202(b), RM-8053
Table of Allotments, RM-8054
FM Broadcast Stations.
(Olathe and Topeka,
Kansas)

NOTICE OF PROPOSED RULE MAKING
AND ORDER TO SHOW CAUSE

Adopted: September 3, 1992; Released: October 2, 1992

Comment Date: November 23, 1992
Reply Comment Date: December 8, 1992

By the Chief, Allocations Branch:

1. Before the Commission for consideration are two separately filed and mutually exclusive petitions for rule making. The first proposal, filed by Bott Broadcasting Company ("Bott"), requests the substitution of Channel 222C3 for Channel 222A at Olathe, Kansas, and modification of the construction permit for Station KCCV-FM (formerly Station KVVUQ(FM)) to specify operation on Channel 222C3.¹ To accommodate the upgrade at Olathe, Bott also requests the substitution of Channel 257A for Channel 223A at Topeka, Kansas (RM-8053). The second proposal, filed by Margaret Escriva ("Escriva"), requests the substitution of Channel 223C3 for Channel 223A at Topeka, Kansas, and modification of her construction permit accordingly (BPH-871124MG)(RM-8054).

2. In support of its request, Bott states that substitution of Channel 222C3 for Channel 222A would significantly increase Station KCCV-FM's coverage, bringing additional service to the area. The upgrade would allow for the maximum and most efficient use of Channel 222. Bott filed a supplement to its petition explaining that it had recently been advised that a construction permit was granted for Channel 223A at Topeka. Bott states that it will reimburse the permittee of Channel 223A for all reasonable expenses in changing channels. It further states that it served the permittee with a copy of the supplemental comments.

3. The petition filed by Escriva proposes the substitution of Channel 223C3 for Channel 223A at Topeka, Kansas, and modification of the construction permit for Channel 223A accordingly.² Escriva states that modification of the authorization to specify the higher class channel would provide additional reception service for Topeka.

4. We believe both proposals warrant consideration. Channel 222C3 can be allotted to Olathe, Kansas, in compliance with the Commission's spacing requirements.³ To accommodate the upgrade at Olathe, we shall propose the substitution of Channel 257A for Channel 223A at Topeka, Kansas, and modification of the construction permit for Channel 223A to specify operation on Channel 257A.⁴ Channel 222C3 at Olathe is short spaced to Channel 222A, Station KDEE, Cameron, Missouri. The construction permit for Station KDEE, Cameron, was modified to specify operation on Channel 261C2 in MM Docket 89-558.⁵ The grant of a license for Station KCCV-FM may be withheld until Station KDEE is licensed on Channel 261C2. We shall propose to modify the construction permit for Station KCCV-FM, Channel 222A, to specify operation on Channel 222C3 in accordance with Section 1.420(g) of the Commission's Rules. In response to Escriva's petition, we shall propose to substitute Channel 223C3 for Channel 223A at Topeka, Kansas, and modify the construction permit for Channel 223A to specify operation on the higher class channel. Channel 223C3 can be allotted to Topeka, Kansas, in compliance with the Commission's spacing requirements at petitioner's specified site.⁶ We note that Channel 223C3, Topeka, is short spaced to the allotment site for Channel 222A, Olathe, but fully spaced to the construction permit for Channel 222A (BPH-880421NH). We shall propose to modify the construction permit for Channel 223A, Topeka, to specify operation on Channel 222C3 in accordance with Section 1.420(g) of the Commission's Rules.

5. We believe that the public interest would be served by seeking comments on these proposals for the reasons stated above. Accordingly, we propose to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

City	Channel No.	
	Present	Proposed
OPTION I		
Olathe, Kansas	222A	222C3
Topeka, Kansas	223A, 247C, 262C, 295C, 299C	247C, 257A, 262C, 295C, 299C

¹ An application for the assignment of the construction permit of Station KVVUQ(FM), Olathe, from Marianne S. Harbart to Bott Broadcasting Company was granted on July 1, 1992 (BAPH-920515HC). Ms. Harbart has filed a statement consenting to the filing of this petition. The call sign for Station KVVUQ(FM) was changed to KCCV-FM, effective July 31, 1992. The construction permit was granted April 3, 1992, in MM ket No. 89-293, FCC 92D-27 (effective May 26, 1992).

³ The coordinates for Channel 222C3 at Olathe are 38-58-46 and 94-50-44.

⁴ The coordinates for Channel 257A at Topeka are 39-07-33 and 95-41-08.

⁵ See 7 FCC Rcd 2192 (1992).

⁶ The coordinates for Channel 223C3 at Topeka are 39-05-31 and 95-47-05.

DA 92-1215

Federal Communications Commission

OPTION I.

Topeka, Kansas	223A, 247C,	223C3, 247C,
	262C, 295C,	262C, 295C,
	299C	299C

6. IT IS ORDERED. That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Margaret Escriva, the permittee of Channel 223A, Topeka, Kansas, SHALL SHOW CAUSE why its construction permit should not be modified to specify operation on Channel 257A in lieu of Channel 223A.

7. Pursuant to Section 1.87 of the Commission's Rules, Margaret Escriva, may, not later than November 23, 1992, file a written statement showing with particularity why its construction permit should not be modified as proposed in the Order to Show Cause. The Commission may call on Margaret Escriva to furnish additional information. If Margaret Escriva raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Margaret Escriva will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED. That the secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

Meredith S. Senter, Jr.
Stephen D. Baruch
Leventhal, Senter
& Lerman
2000 K Street, N.W.,
Suite 600
Washington, D. C. 20006-1809

Cameron Radio, Inc.
Station KDEE
Rt. 1, Box 29A
Cameron, Missouri 64429

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before November 23, 1992, and reply comments on or before December 8, 1992, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Meredith S. Senter, Jr.
Stephen D. Baruch
Leventhal, Senter
& Lerman
2000 K Street, N.W.,
Suite 600
Washington, D.C. 20006-1809

Harry C. Martin
Cheryl A. Kenny
Reddy, Begley
& Martin
1001 22nd Street, N.W.,
Suite 350
Washington, D.C. 20037

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

Federal Communications Commission

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DA 92-1215

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

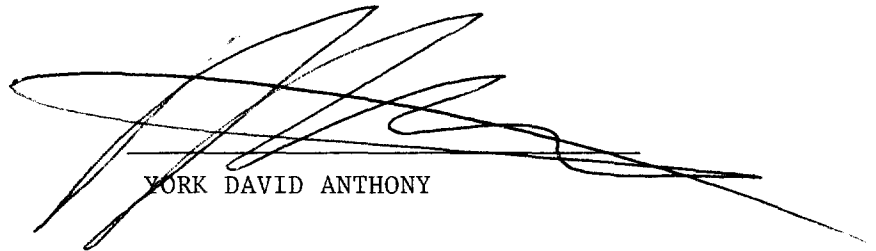
6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

CERTIFICATE OF SERVICE

I, York David Anthony, president of NEW HORIZONS FOUNDATION, INCORPORATED, certify that copies of the attached COUNTERPROPOSAL were sent by first class US Mail, postage prepaid, to the following parties:

Meredith S. Senter, Jr., Esquire
Stephen D. Barauch, Esquire
Leventhal, Sentner and Lerman
2000 K Street, NW #600
Washington, DC 20006-1809

Harry C. Martin, Esquire
Cheryl A. Kenny, Esquire
Reddy, Begley and Martin
1001 22nd Street, NW #350
Washington, DC 20037



YORK DAVID ANTHONY

This the 20th day November, 1992